bankruptcy statute that a chose in action was a chattel, and was in the "possession, order and disposition" of the bankrupt so as to pass to his trustees in bankruptcy unless a former assignee had given notice to the debtor.[8] In both the above cases, the first sale or assignment passed everything that the seller had, and the buyer or assignee was required to do nothing more to complete his title.[9] It was simply because the seller retained possession of the thing sold that a second *bonâ fide* purchaser was protected. So it was not unnatural that in the case of an equitable interest, equity followed the existing law, and if the assignor could be said to retain possession over the equitable interest, then a second assignee who obtained possession would be protected. Where there are evidences of an equitable interest or a chose in action, as a bond or an insurance policy, it would seem that if the first assignee took possession of them he should be protected.[10] Where such is not the case the nearest approach to taking possession is notification to the trustee or debtor of the assignment.[11]

Shortly after Dearle *v.* Hall was decided, the English law as to the fraudulent retention of possession of a chattel by the seller was put on a sounder basis,[12] and to-day the better rule seems to be that it is only evidence of fraud.[13] So if equity had continued to follow the analogy of the law the better rule to-day would perhaps make failure on the part of the first assignee to give notice to the debtor or trustee merely evidence of fraud. But the principal case is in line with the present tendency of decisions in this country.[14] To contend, as the principal case does, that the first assignee has been negligent and so is not entitled to priority would seem to beg the question.[15] It is, however, true that modern business deals largely and freely with equitable interests and choses in action. And it tends, perhaps, to a fairer dealing with such interests to have as an unvarying rule that retention of possession by the assignor is "conclusive evidence" of fraud.

RATIFICATION OF UNAUTHORIZED CONTRACTS OF INSURANCE AFTER OCCURRENCE OF LOSS. — Can a policy of insurance obtained by an unauthorized agent be ratified by his principal after he knows of the loss?[1] Text writers usually state broadly that such ratification is effectual.[2]

[8] This latter was only a *dictum*, as the assignee had done nothing.

[9] See 19 YALE L. J. 258.

[10] Coffman *v.* Liggett, 107 Va. 418, 59 S. E. 392.

[11] The doctrine of retention of possession by the seller must not be confused with delivery which under the old law was necessary to perfect title. See WILLISTON, SALES, § 350.

[12] Martindale *v.* Booth, 3 B. & Ad. 498 (1832).

[13] See WILLISTON, SALES, §§ 352–404.

[14] Graham Paper Co. *v.* Pembroke, 124 Cal. 117, 56 Pac. 627; Lambert *v.* Morgan, 110 Md. 1, 72 Atl. 407; Phillips's Estate, 205 Pa. St. 515, 55 Atl. 213.

[15] Negligence is the failure to do something that the law requires to be done, and the very question here is whether the law says that the first assignee has a duty to give notice.

[1] The right is sometimes expressly given by statute. MARINE INSURANCE ACT, 1906 (6 EDW. 7, c. 41), § 86.

[2] See 2 CLEMENT, FIRE INSURANCE, 481; 1 JOYCE, INSURANCE, § 642; STORY, AGENCY, 7 ed., § 248.

But a recent case denies the right, and suggests that the doctrine be confined to policies procured by a bailee of goods insuring their value both for his own interest and "for account of whom it may concern." *Kline Bros. & Co.* v. *Royal Ins. Co.*, 192 Fed. 378 (Circ. Ct., S. D. N. Y.). Under such facts it is universally held that the bailee may recover the value of the policy but must hold the excess above his own interest for the owner of the goods.[3] It has been argued that this is not ratification, but that the owner is entitled to the excess proceeds as a trust held for his benefit by the bailee.[4] But if the bailee has not recovered, the owner may sue the insurance company directly.[5] Moreover, he may sue the bailee at law.[6] Nor does he recover as the beneficiary of the policy, for he is indemnified only for his own loss, and he may sue in those jurisdictions where only parties to the contract can maintain an action.[7] Since he is neither a *cestui que trust* nor a beneficiary, he must recover upon the basis of a ratification of the contract made in his behalf, and it was so held in a recent case. *Symmers* v. *Carroll*, 134 N. Y. Supp. 170 (N. Y., App. Div.).[8] The fact that the quasi-agent happened to have himself an insurable interest in the property insured in most of the decided cases can furnish no logical ground for distinguishing them.

Against the right of ratification is urged the principle that it is not allowed if it works hardship, or if exercised at a time when the contract itself could not be made.[9] There seems but slight authority for the latter proposition.[10] In many cases, moreover, a contract of insurance could be made after loss based upon the uncertainty of the amount of the loss.[11] As to hardship, if the insurer acted in reliance upon the quasi-agent's authority, he cannot complain if ratification is equivalent to prior authority.[12] If the quasi-agent's lack of authority was known, the insurer must negotiate upon the contingency of ratification and cannot complain whether it occurs or not. In any case of ratification, the right of one party to accept or reject the contract involves speculation at the expense of the other party. Since the insurer may retain the premium if he has received it,[13] to deny ratification would frequently mean his unjust

[3] Fire Ins. Association *v.* Merchants, etc. Co., 66 Md. 339, 7 Atl. 905; Home Ins. Co. *v.* Baltimore Warehouse Co., 93 U. S. 527; California Ins. Co. *v.* Union Compress Co., 133 U. S. 387, 10 Sup. Ct. 365. Some jurisdictions hold that the owner is not limited to the excess but is entitled to a *pro rata* share. Snow *v.* Carr, 61 Ala. 363; Siter *v.* Morrs, 13 Pa. St. 218.

[4] Robertson *v.* Hamilton, 14 East 522; Stillwell *v.* Staples, 19 N. Y. 401.

[5] Williams *v.* North China Ins. Co., 1 C. P. D. 757; Finney *v.* Fairhaven Ins. Co., 5 Met. (Mass.) 192.

[6] Snow *v.* Carr, *supra*; Miltenberger *v.* Beacom, 9 Pa. St. 198.

[7] Williams *v.* North China Ins. Co., *supra*; Finney *v.* Fairhaven Ins. Co., *supra*.

[8] The contract after ratification is made with the owner, but the bailee may recover from the insurer since his principal is partly undisclosed.

[9] See 20 HARV. L. REV. 504.

[10] See Cook *v.* Tullis, 18 Wall. (U. S.) 332, 338; MECHEM, AGENCY, § 126. These authorities fail to distinguish this from the intervention of rights of third parties as a ground for refusing to allow ratification.

[11] *Cf.* Seward *v.* Mitchell, 1 Cold. (Tenn.) 87; Supreme Assembly *v.* Campbell, 17 R. I. 402, 22 Atl. 307.

[12] If the principal fails to ratify, the insurer may hold the quasi-agent for all loss suffered thereby under the doctrine of Collen *v.* Wright, 8 E. & B. 647.

[13] See STORY, AGENCY, 7 ed., § 248. The money was paid with full knowledge of the facts. There is no failure of consideration since the insurer's performance is necessarily conditional upon ratification.

enrichment. But it seems immaterial that the quasi-agent has not paid the premium, though that is one of the grounds of decision in the federal case. After ratification, consideration moves from the principal; before that, there seems no necessity for consideration except such assent upon the part of the quasi-agent as may keep the insurer's promise open.

In England, where there may be no withdrawal until there has been an opportunity for ratification,[14] the occurrence of the loss seems immaterial to prevent it. Even if, more properly, the agreement before ratification can be revoked,[15] the loss should not effect a revocation without direct communication between the parties. It is like a change in the market making an offer manifestly unprofitable to the offeror but not preventing acceptance by the offeree.[16] Even if the acceptance of an offer after an uncontemplated change in the situation would be fraudulent, it does not follow that ratification would be, since the unratified contract is more permanent than an offer. Since it purports to take effect immediately, it necessarily contemplates the possibility of such a change as loss of the property taking place before ratification.

SPECIFIC PERFORMANCE WITH ABATEMENT OF PURCHASE PRICE. — It is settled, as a general principle in equity, that where a vendor of land is unable to make a perfect title to all the land he has contracted to convey, the purchaser is entitled to a conveyance of such interests as the vendor may have, with an abatement of the purchase price proportionate to the deficiency.[1] It has been suggested as an explanation of this doctrine that the vendor, having asserted a title to the entirety, is now estopped to deny it.[2] But the decree cannot logically be based upon the assumption that the interest of the vendor is the entirety of the subject matter called for by the contract, since an abatement of the purchase money is allowed. It should be recognized that the court is, in fact, executing a contract the parties never made.[3] The justification lies in the great hardship upon a purchaser if he is left to his remedy at law, and the comparatively slight hardship upon the vendor in compelling him to convey part of that which he has contracted to convey for a compensation on approximately the basis contracted for by the parties.[4]

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[14] Bolton Partners *v.* Lambert, 41 Ch. D. 295; *In re* Tiedemann, [1899] 2 Q. B. 66.

[15] See 9 HARV. L. REV. 60.

[16] It was held in Dickinson *v.* Dodds, 2 Ch. D. 463, that knowledge by the offeree of the offeror's intention to revoke prevented acceptance. For criticisms of this case, see LANGDELL, SUMMARY OF THE LAW OF CONTRACTS, 245; WALD'S POLLOCK, CONTRACTS, 3 ed., 33.

[1] Hill *v.* Buckley, 17 Ves. 394; Barnes *v.* Woods, L. R. 8 Eq. 424. See Mortlock *v.* Buller, 10 Ves. 291, 315. The fact that there is a want of mutuality of remedy to such a contract has given pause to some courts. See Lawrenson *v.* Butler, 1 Sch. & Lef. 13, 18; Graham *v.* Oliver, 3 Beav. 124, 128. But it has not proved an insuperable objection. See FRY, SPECIFIC PERFORMANCE OF CONTRACTS, 5 ed., §§ 474, 475, 476.

[2] See Rudd *v.* Lascelles, [1900] 1 Ch. 815, 818.

[3] See Thomas *v.* Dering, 1 Keen 729, 746, 747; DART, VENDORS & PURCHASERS, 7 ed., 1079; FRY, SPECIFIC PERFORMANCE OF CONTRACTS, 5 ed., § 1268. The Scotch law refuses thus to make over a contract. See Stewart *v.* Kennedy, 15 App. Cas. 75, 102.

[4] This argument has a peculiar force in jurisdictions where in an action at law the